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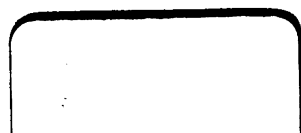
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EULOGIES ON JOHN MARSHALL

Delivered by George H. Williams at the Capitol in Salem, and by Horace G. Platt at Cordray's Theatre, in Portland, and Proceedings in the Courts on John Marshall Day, February 4, 1901, in Commemoration of the Services of John Marshall, Chief Justice of the United States. ♡ ♡ ♡ ♡ ♡ ♡ ♡

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**Proceedings in the Courts
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At 10 o'clock A. M. on the 4th day of February, 1901, on the opening of the United States District and Circuit Courts at Portland, Oregon, Judge Charles B. Bellinger presided, and by invitation four Judges of the State Circuit Court occupied the bench with him; namely, Judges Arthur L. Frazer, Jno. B. Cleland, Alfred F. Sears, Jr., and M. C. George. A large number of members of the bar were in attendance.

The following resolutions were presented in behalf of the bar, and were ordered to be entered in the journal:

Whereas, on the 4th day of February, 1801, John Marshall entered upon his great life work as Chief Justice of the Supreme Court of the United States, at a time when the Constitution was yet a novel and untried experiment, and the impoverished people were but just recovering from the devastating effects of the war for independence; and thereafter, throughout the period of a third of a century, while he adorned the bench, in passing upon cases involving the scope and functions of the national government, and the limitations upon the powers of the states, the jurisdiction and powers of the Federal Courts, and difficult questions of growing importance relating to

75721

the expanding commerce and the industrial development of the country, he was ever the embodiment of wisdom and learning, and of those virtues that are the attributes of the judicial office; so that, as it was with Washington and with Lincoln in other emergencies, he may justly be said to have been the man for the hour, fitted by nature and by training to accomplish what a man of less ability or of different mold would have failed to accomplish; and so that it may be repeated of Marshall, as was said of him by one of his associates upon the bench, that he was "the very personification of justice itself, as he ministered at its altars in the presence of the nation."

And whereas, it is fitting that this centennial anniversary shall be marked by more than a passing thought, and that some expression be given by the courts and the bar of the profound sense of obligation that is imposed upon mankind by his judicial labors, and particularly by his luminous exposition of the principles that underlie the American Constitution and his fearless application of those principles to cases that were submitted to him for decision.

And whereas, this day has, by general consent, been designated as "John Marshall Day," and voluntarily set aside by the people of the nation in memory of him who is at once the pride and the exemplar of his profession.

Now, therefore, be it resolved, by the bench and bar here assembled, that in commemoration of the accession of Chief Justice Marshall to the Supreme Bench of the United States, this day be observed as a holiday, and that the United States District and

Circuit Courts for the District of Oregon, and the several departments of the State Circuit Court and the County Court for Multnomah County be requested to adjourn for the day, and to spread upon their several journals this resolution, that it may be perpetuated as a memorial in the records of these tribunals and as an expression of our appreciation of Marshall's position in the history of our country.

The following named members of the bar addressed the Court upon subjects previously assigned to them: "The Times of Marshall," C. E. S. Wood; "Osborn v. Bank of the United States," John B. Cleland; "Gibbons v. Ogden," Zera Snow; "The Trial of Aaron Burr," W. D. Fenton; "The Dartmouth College Case," A. F. Sears, Jr.; "The Marbury Case," C. B. Bellinger.

At the conclusion of these proceedings the court adjourned for the day.

At a subsequent hour, the State Circuit Courts also directed the entry of the foregoing resolutions in their journals.

At 2 o'clock P. M., a large meeting of the bench and bar and the public assembled at Cordray's Theater, Portland, on which occasion Mr. Horace G. Platt, of San Francisco, was introduced by Judge Bellinger; and he then delivered the oration printed herewith.

At Salem, appropriate ceremonies were had before the State Circuit Court in the morning, and at 7:30 P. M., at the request of the Legislative Assembly, the Governor and the Justices of the Supreme Court,

Mr. George H. Williams delivered an oration in the Hall of Representatives at the Capitol, before the state officers and members of the Legislature and a representative gathering of the citizens of Salem. The address is appended.

By proclamation, the Governor set aside the afternoon of the day as a public holiday, and throughout the state the day was observed with suitable ceremonies. The schools and colleges closed, after appropriate proceedings, including lectures and addresses commemorating the life and work of Chief Justice Marshall.

ADDRESS

**On JOHN MARSHALL
Delivered by Hon. Geo. H.
Williams before the Legis-
lative Assembly of the State
of Oregon, February 4, 1901.**

Daniel Webster, in one of his great speeches, said: "By ascending to an association with our ancestors, by contemplating their example and studying their character; by partaking their sentiments and imbibing their spirits, by accompanying them in their toils, by sympathizing in their sufferings and rejoicing in their successes and triumphs, we mingle our existence with theirs and seem to belong to their age." Today we commemorate the appointment 100 years ago of John Marshall as Chief Justice of the Supreme Court of the United States, and ascend with hearts full of pride and gratitude to an association with the men and events of that day. Washington, Madison, Hamilton, Jefferson and many others not less worthy were working out the problem of self-government, but in this constellation of patriots and statesmen none shone with a clearer, steadier and stronger light than John Marshall. Whatever may have been the shortcomings of Virginia in modern times, when she was a colony, she was old enough and good enough to produce men whose deeds shed imperishable luster upon the history of our country. Washington deservedly and by universal consent holds the first place in

the hearts of his countrymen, but if merit is to be determined by the value of his services, then next to Washington among Virginians John Marshall "leads all the rest."

To say this is not to disparage the great abilities or merits of Madison, Jefferson or others, but to say that Marshall had greater opportunity than his contemporaries to render valuable services to his country. And I may add that Jefferson and Madison made some serious mistakes as to matters of government, but none of any consequence was ever made by Marshall. Thomas Jefferson devoted his great talents and influence to the cause of his country in the War of the Revolution, but when the independence of the colonies was achieved, he differed with Washington, Hamilton, Jay and others as to the nature of the General Government and the rights of the States, and his resolutions of 1798, incubated by slavery, finally broke out into a bloody war for the dissolution of the Union. Madison was infected with the same ideas, as indicated in his Virginia resolutions of 1799, but in his old age he became more conservative and more favorable to the supremacy of the Federal Government.

Marshall, from the beginning of his public career to the end of his life, builded, supported and defended an indestructible Union under a Government within its constitutional limits, of absolute sovereignty over the States. Washington, Hamilton and Adams, with their followers, called "the Federal party," favored a broad and liberal construction of the Constitution adequate to the growing necessities of the country. Jefferson, Madison and their followers, called "the

Anti-Federalists," held to a strict and narrow construction of the Constitution. Though the Federal party, on account of its views of the Constitution, went down, the drift of all political parties of the present day is in favor of the Federal theory of the Government. I can remember the time when the dominant party of the country held that appropriations by Congress for a system of internal improvements were unconstitutional, but now all parties hold otherwise, and the statesmanship of a Senator or Representative in Congress is measured by the amount of money he can extract from the public treasury to improve the locality in which he lives. One of the main issues in the late Presidential election was as to which party had gone, or would go farthest, through Congressional legislation, to regulate and control the business affairs of the country, which formerly were supposed to belong exclusively to the states. One of the mischievous tendencies of the time, in my judgment, is to make the General Government too much the guardian and benefactor of individual and local interests.

Great men are born and not made by education or opportunity, but opportunity is as necessary to the display of greatness as sunshine is to the growth of vegetation. No doubt multitudes of men as great as any named in history have lived and died in obscurity for the want of an opportunity to exploit their greatness. Washington, without the Revolution, might have continued a respectable planter of Virginia. Lincoln, without the slavery agitation, might have continued a lawyer of local fame in Illinois, and Grant might have remained a humble tanner at Galena,

without the War of the Rebellion. But great men come with great opportunities, and the world resounds with their fame. Marshall was a great man, and he had greater opportunities than his contemporaries to show his greatness. He was appointed Chief Justice in 1801, when our Government was in a chrysalis state; and long after Washington, Adams, Jefferson, Madison and Hamilton had retired to private life, he was placing pillars of strength and stability under the Constitution of the United States. I do not underestimate the value of schools in saying that, while they may cultivate they cannot create greatness. No man can be a great poet, painter or judge, whether his learning be little or much, without an inborn aptitude for his business. I have seen brilliant lawyers elevated to the bench who made poor judges. I have seen others with little repute at the bar make good judicial officers, because they possessed by nature a strong and intuitive sense of right and wrong. Theoretically, courts are organized to administer justice between man and man, and he whose mind is so constituted that, out of the conflicts of litigation, he can make a righteous judgment, has the first qualifications of a good Judge. I doubt very much whether the multitude of law books and the wilderness of judicial decisions we now have are of much, if any, advantage to our courts, and my reason for this impression is that seventy-five and one hundred years ago, when Marshall and Kent were Judges and law books were comparatively scarce, the decisions of the courts were as good as they are at the present time, founded, as

the decisions now are, more upon precedents than upon principles.

On the 24th of September, 1755, just as the sheen of Summer was passing into the gold and russet of Autumn, a man child was born in Fauquier County, in the Colony of Virginia. His name was John Marshall. Virginia was then a new country, sparsely settled with white people, and most of her mountains, streams and forests had never been disturbed by the hand of civilization. Nature in her primordial freshness and beauty was the primary department in the education of Marshall. Like Washington and Lincoln, he was a scholar without the benefit of schools. Parental instruction and his own resources were his sole dependence in his early boyhood. To acquire learning under such circumstances is to learn to be industrious, courageous and self-reliant. Men who are educated in this way are apt to make their mark in the world. Ambition with native vigor of intellect is the key to success, and it makes little difference in the end to a Lincoln whether he goes through college or reads his books in a log cabin by the light of a blazing pine knot. One of the surprising things about Marshall was his literary and professional attainments, in view of his limited opportunities for an early education. His parents were his only teachers until he was 14 years of age. When he had learned to read, Shakespeare, Milton and Pope were about the only books to which he had access. To study books like these, away from the allurements of social life and where unsullied Nature "glows in the stars and blossoms in the trees" opens the youthful mind to grand conceptions of a future career. Between the age of 14

and 18 years he was favored with instructions by a private tutor, and with qualifications acquired in this way, he determined to enter upon the practice of the law. He commenced to read Blackstone, but the premonitory convulsion of the approaching Revolution drew him away from his books to a field of excitement, turmoil and danger.

Patrick Henry's ringing words, "Give me liberty or give me death!" spread like wildfire through the settlements of Virginia, and military companies were formed to emphasize this sentiment. When Marshall was 19 years of age, he was made a Lieutenant of one of these companies, and thenceforward for five years devoted all the energies of his mind and body to the military service of his country. He was subsequently appointed General by the Legislature of Virginia, and thereafter, until he became Chief Justice, was known as General Marshall. Few men have been fortunate enough to be distinguished as soldier, statesman and jurist, but distinction as to all these justly belongs to Marshall. Not to mention minor engagements, Marshall commanded a company in the bloody battles of Brandywine, Germantown and Monmouth, and was highly commended by Washington for his skill and gallantry. But more than elsewhere his sterling and soldierly qualities were displayed at Valley Forge. Washington, after his defeat at Germantown, withdrew his exhausted troops to this place for Winter quarters. Here officers and men alike were exposed to the rigors and hardships of an unusually severe Winter. The weather was extremely cold, and the snow knee deep. Hastily and rudely constructed huts were the only protection from the pitiless storm.

Many of the men were half naked; few had blankets or shoes, and frequently they were without anything to eat. Washington, referring to Valley Forge, truly said that "no history now extant can furnish an instance of an army suffering such uncommon hardships as ours has done and bearing them with the same patience and fortitude." Marshall was undaunted under these trying circumstances. He devoted himself to the care of the men, comforted the suffering, visited the sick, encouraged the despondent and was a light and joy to that dreary and dismal camp.

When he was 24 years of age, after attending a course of law lectures by Chancellor Wythe, he commenced the practice of law in Richmond. He rose rapidly to the front rank of his profession. He was no orator like Patrick Henry, but what he lacked in brilliancy he made up in strength. He was tall, lean and angular, ungraceful in his gestures, slovenly in his dress, much like Lincoln in these respects, but his mind was active and vigorous and his speeches remarkable for their clearness, conciseness and force. Marshall was a Federalist and believed that Governments were made to govern, and his political friends soon put him forward as their candidate, and in 1782 he was elected to the Legislature of Virginia, and twice re-elected.

Local matters were largely absorbed in the great and burning questions concerning the character and powers of a General Government; the deplorable condition of the finances of the country, and the claims of the poor and unpaid soldiers of the Revolutionary Army. Whether or not there were those in that Leg-

islatre who favored a dissolution of the confederacy is a question, but it is an undisputed fact that there was a powerful party opposed to any essential change in the articles of confederation, and who favored the practical sovereignty of the several Colonies within their respective jurisdictions. Marshall, from the beginning, was fearless and determined in his contention that the articles of confederation were inadequate to a perfect union, and that there ought to be a better organized and more efficient General Government. To Marshall more than to any other man is due the decision of Virginia to hold a convention to determine whether or not she would accept or reject the Constitution. Patrick Henry, James Madison, James Monroe, John Marshall, Edmund Randolph and many of the most distinguished men of Virginia, were members of that convention.

Such was the state of affairs that upon the decision of this convention depended the creation of a national unity or a relapse by the Colonies into independent and rival communities. Patrick Henry, James Monroe and George Mason were the leaders of those opposed to the Constitution, and John Marshall, James Madison and Edmund Randolph were the leaders of those who favored its ratification.

Patrick Henry opposed the Constitution with all the fervor and force of his eloquence, especially upon three grounds. First, he argued that it was dangerous to lodge the power of taxation in Congress, as that body would be likely to oppress and rob the people; and he contended that the General Government should depend for its revenues upon the voluntary

contribution of the States. Second, he claimed that Congress ought not to have the power to declare war, and contended that the exercise of this power would end in a military despotism, and that the military forces of the Government would overrun and subjugate the people; arguments with which we became quite familiar in the late Presidential campaign. Third, he opposed the establishment of a Supreme Court because, as he said, it would usurp powers not delegated to it, and destroy the Governments of the States. It is easy to see that if these views had obtained, the Union would have been little stronger than a rope of sand. Marshall confronted Henry upon all these points with great power and success, and the convention ratified the Constitution by a majority of ten votes. It is impossible to speak too highly of the services of Marshall in this convention.

In 1788 he became a member of the State Legislature of Virginia. Washington was then President, and his administration was bitterly opposed by a majority of this body, and to such an extent was their hostility carried that when a resolution was offered expressing confidence in the virtue, patriotism and wisdom of Washington, a motion to strike out the word "wisdom" was lost by a bare majority. Marshall here, as elsewhere, was a steadfast friend and supporter of Washington's administration. John Jay had made a treaty with Great Britain, containing provisions regarding the commerce of the two countries, which the President had approved. This treaty intensified the animosity of the anti-Federalists to the administration. They denounced it as unconstitutional; as insulting to the dignity and injurious to the

interests of the American people. Marshall defended the treaty in a speech that gave him a national reputation. President Washington had a profound respect for the abilities and character of Marshall, and offered to make him Attorney-General and send him as Minister to France, but, desirous of devoting himself to his profession, he declined these appointments. France, at this time in the hands of a Directory with the able and unscrupulous Talleyrand as its master spirit, had seized and confiscated our ships, upon the pretext that Washington had said something in one of his messages offensive to that country, and that the Jay treaty was inimical to its interests. President Adams, anxious to avoid war, appointed Marshall. Pinckney and Gerry envoys extraordinary to adjust the difficulties, if possible, without an appeal to arms. When these envoys arrived in Paris they were insulted and treated with marked disrespect, and told that they would not be allowed to open negotiations before they had paid the Directory \$250,000 and arranged for a loan by the United States to France. Marshall's correspondence with Talleyrand as to these matters is highly creditable to his head and heart, and, though dignified and moderate in tone, was very pointed, that not a moment's consideration would be given to these mercenary proposals. Nothing came from this embassy, and the envoys returned home to be honored by their fellow citizens for the stand they had taken for the dignity and honor of their country. I have had some little insight into European diplomacy, and where venality does not control, it is little more than a refined system of lying and fraud. False professions of friendship and amity are constantly put

forward to conceal selfish schemes or ulterior designs upon the integrity and peace of the country to which the professions are made.

Washington was anxious to have Marshall enter Congress, and with reluctance, but in deference to the wishes of the ex-President, in 1799, he became a candidate for that body. He was attacked in the most venomous manner, and with all our admiration for our Revolutionary fathers, it must be admitted that the vituperation and scurrility of party warfare in those days were equal at least to anything of the sort we have in modern times. He was elected by a small majority, and one of the first duties he had to perform after taking his seat was to announce the death of Washington and introduce suitable resolutions, prepared by General Lee, in which appear for the first time those famous words, "First in war, first in peace, and first in the hearts of his countrymen."

His speech upon that occasion was a tender and touching tribute to his distinguished and departed friend. On the 13th of June, 1800, he was appointed Secretary of State by John Adams, but his administration of that office was brief, as the Presidential term of Adams expired on the 4th of March, 1801, and Marshall was confirmed as Chief Justice on the 4th of February, 1801.

When the Jay treaty was made. France assumed an attitude of hostility to the United States, and afterward, when we made a treaty with France, England assumed a similar attitude, each power presuming to thrust its own interests into our affairs. Touching these matters, Marshall, as Secretary of State, sent a

dispatch to Mr. King, our Minister in London, in which he said: "The United States do not hold themselves in any degree responsible to France or to Great Britain for their negotiations with one or the other of these powers. We have repelled and will continue to repel injuries not doubtful in their nature, and hostilities not to be misunderstood." It is interesting to note the difference between the supercilious treatment of us by these countries, when we were weak and exhausted by the Revolutionary War, and the distinguished consideration they hasten to give us at the present time.

Marshall was 46 years of age when he was appointed Chief Justice. Several pen pictures were written of him at the time. One writer describes him as a person tall, meager, emaciated, his muscles relaxed, his joints so loosely connected as not only to disqualify him apparently for any vigorous exertion of body, but to destroy everything like harmony in his air and movements. Another said of him: "He is of a tall, slender frame, not graceful or impressing, but erect and steady. His hair is black, his eyes small and twinkling, his forehead rather low, but his features are in general harmonious. His manners are plain, yet dignified, and an unaffected modesty diffuses itself through all his actions." Daniel Webster spoke of him as a plain man, and further said: "I have never seen a man of whose intellect I had a higher opinion." According to these descriptions I have been struck with the resemblance between Marshall and his eminent successor, Chief Justice Taney, whom I had the pleasure of meeting in 1852. Taney was tall, thin and meager in person, with a remarkably

low forehead, black, piercing eyes, and sharp, strong features; but he was the impersonation of dignity and a typical specimen of an old-fashioned courtly gentleman. Taney's opinion in the Dred Scott case will compare favorably with the opinions of Marshall as an intellectual effort: but the difference is this: Taney's opinion is an ingenious framework of logic, standing, or trying to stand, upon its apex, while the opinions of Marshall are solid structures of reasoning, standing upon a broad, deep and permanent foundation.

On the 26th of September, 1789, the Supreme Court was organized, with John Jay as Chief Justice. He held the office until 1795. Rutledge held the office for one year, and then Ellsworth until 1801, so that when Marshall was appointed, the court had been in existence about eleven years and was just upon the threshold of its great responsibilities. We can have but a feeble conception of the difficulties confronting this new forum of law and justice. Here was a court without any precedent in history, with powers never before conferred on any judicial tribunal, starting out on a career very much like the experiment of Columbus in sailing out upon an unknown ocean, without knowing what he would discover or where he would land, or whether or not his voyage would be a disastrous failure. Many, perhaps a majority of the people of that time, looked upon this court as a disguised enemy to the liberties of the people. Its most sanguine friends had doubts and fears as to its harmonious working with the other departments of the Government. While it may be true, as Gladstone said, that "the American Constitution is the most

wonderful work ever struck off at a given time by the brain and purpose of man." it is also true that without a tribunal of final resort to interpret, construe and enforce its provisions, if not a dead letter, it would be the subject of unhappy and endless disputation.

Primarily, and as applicable to all its parts, was the great question, whether or not it should be strictly or liberally construed; or, in other words, whether it should be construed according to the letter that killeth, or the spirit that giveth life. All those opposed to the adoption of the Constitution, and the Republicans, as the anti-Federalists were then called, with Jefferson at their head, contended for a strictly literal construction, because they were jealous of the jurisdiction of the Federal Government and sensitive to the rights of the states; but Marshall, with the wisdom of a seer, and the prevision of a prophet, was of a contrary opinion. Referring to this subject in the case of *Gibbons vs. Ogden*, he said: "If counsel contend for that narrow construction which, in support of some theory not to be found in the Constitution, would deny to the Government those powers which the words of the grant, as usually understood, impart, and which are consistent with the general views and objects of the instrument—for that narrow construction that would cripple the Government and render it unequal to the objects for which it is declared to be instituted and to which the powers given as fairly understood render it competent, then we cannot perceive the propriety of this strict construction, nor adopt it as a rule by which the Constitution is expounded."

Taking all his opinions together, his idea of the Constitution seems to have been that, expressly or by implication, it granted to the General Government all the necessary and proper means to establish justice, insure domestic tranquillity and promote the general welfare, and that these means were largely discretionary, but at the same time he recognized the doctrine that the General Government was one of delegated and limited powers. It is easy to see that to draw the line of demarkation between what was granted and what was withheld by the Constitution required great good judgment, and a comprehensive view of the the objects and purposes of the Government. One of the important questions arising at an early day was whether or not the Supreme Court had a right to declare an act of Congress void upon the ground that it was repugnant to the Constitution. This question was decided by Chief Justice Marshall, delivering the opinion of the court in the celebrated case of Marbury vs. Madison, in which it was held that an act of Congress conferring original jurisdiction upon the Supreme Court in a mandamus case was unconstitutional and void. Some politicians have complained of this decision, but its correctness cannot be successfully challenged.

No decision of Marshall's has been more severely criticised than his decision in the Dartmouth College case. The court held in that case that a charter granted to the college was a contract, and that an act of the Legislature of New Hampshire changing it was void, under that clause of the Constitution providing that no State shall pass any law impairing

the obligation of contracts. Much has been said about the protection this decision gives to corporations, but be that as it may, it stands like a gleaming rock to support the supremacy of the Constitution and the inviolability of contracts. Marshall delivered the opinion of the court in *Fletcher vs. Peck*, in which it was held that a grant of land by the State of Georgia was an executed contract and that an act of its Legislature revoking the grant was unconstitutional and void. In the case of *McCulloch vs. Maryland* he defined the words "necessary and proper" in that clause of the Constitution providing that Congress shall have power to make all laws necessary and proper to carry into execution the powers granted, giving to them a broad and liberal import, so that the General Government might provide for the varying exigencies of its administration. In the case of *Gibbons v. Ogden* he decided, delivering the opinion of the court, that Congress had the right to exercise exclusive jurisdiction over the navigation of the navigable waters of the United States. I have referred to these decisions, not so much to discuss or defend them, as to show that John Marshall was a firm and consistent protector and defender of the Constitution and of a strong, efficient and successful General Government.

Suppose, instead of Jay, Marshall, Ellsworth and their associates, the Judges had been of those who held with the Kentucky resolutions of 1798 to the effect that a sovereign state had a right to nullify the acts of Congress, there is reason to apprehend that the Union would have fallen to pieces at the start,

and rebellion would have triumphed through the Supreme Court. Suppose instead of Lincoln, when the rebellion broke out, the President had been of those who held that the General Government had no power to coerce a sovereign State, it is highly probable that instead of the joyousness of this day we should be sorrowing over the "broken and disjointed fragments of a once glorious Union." I do not know whether the "Father of Mercies" interferes in a special manner for the protection of men and nations or not, but when I consider how near our Union has been to destruction and how wonderfully we have been preserved as a Nation, I am sure that faith can find nowhere better evidence of the special favor of Divine Providence to a people than in the history of our country for the last 100 years.

An interesting episode in the life of Marshall was the trial of Aaron Burr. Burr, in respect to his abilities, stood in the front rank of the men of his day, but if what is said of him is true, he was much like Milton's Belial:

"He seemed
For dignity composed and high exploit.
But all was false and hollow."

He was indicted for treason and his trial came on at the Richmond circuit, Chief Justice Marshall presiding. No man ever in the United States, with perhaps the exception of Benedict Arnold, was so intensely hated as Burr was at this time. He had killed Hamilton in a duel and betrayed and abused the confidence of Jefferson and his friends. All the influence of the administration, with Jefferson as President, was

thrown in favor of the prosecution, and there was a hurricane of popular clamor for his conviction, notwithstanding which Marshall decided that the evidence was insufficient to support the indictment, and Burr was acquitted. Shafts of indignation, envenomed by party rancor, were hurled at the head of the Chief Justice for this decision, but to no purpose.

"No fire, nor foe, nor fate, nor night,
This Trojan hero did affright."

Music and banners, the shouting of captains and the surrounding excitement inspire soldiers on the field of battle to deeds of daring, but the real heroes of the world are men, who, with nothing to encourage them but their own convictions of duty, stand like a stone wall between the friendless and forsaken and the fury of the mad and unreasoning multitude.

I am proud and happy to say, after more than fifty years of experience at the bar, that with few exceptions our Judges have been men of this description. Bishop Potter is reported as having said that a majority of the people are of the opinion that the Judges of our courts are purchasable. I do not believe a word of it, and in fact I know better, and will venture to say that as to intelligence, integrity and courage, and in public estimation, our Judges will compare favorably with the clergymen of our country, Bishop Potter not excepted. Moral more than physical courage is the safeguard of our national life. Law, justice, truth and virtue are the essential elements of our social existence, and their practical ascendancy depends largely upon their fearless support by the pulpits, press and courts of our country.

I am aware that we are apt to exaggerate the wisdom and virtues of our ancestors, but there can be no doubt that the men who argued cases before Marshall were among the greatest, if not the greatest lawyers this country has produced. Webster, Pinckney, Hopkinson, Martin, Ogden and Wirt were some of the leading members of the bar who practised in the Supreme Court. Let us imagine ourselves in the courtroom when the case of *McCullock vs. Maryland* is before the court. Sitting on the right of the Chief Justice are Bushrod Washington, Johnson and Livingston, and on his left Duval and Story. All are clad in black silk robes. No sound disturbs the impressive silence. All eyes are fixed upon and all ears open to hear the great lawyers. Webster, Wirt and Pinckney are on one side and Martin, Hopkinson and Jones on the other. The question is, whether Maryland has a right to tax a branch of the United States Bank located in that State. Webster opens for the bank. Slowly and clearly he states the issues of the case, and then, as he proceeds to expound the Constitution, he becomes more animated. His swarthy complexion lightens up, his big, black eyes glow in their deep sockets, and with argument dovetailed into argument he seems to build an impregnable fortress around his client. Attorney-General Wirt follows on the same side with a speech interesting and attractive for its rhetorical excellence. Hopkinson and Jones, both eminent in their profession, each make an able argument for the State, and then comes Luther Martin, who stands at the head of the Maryland bar. He denounces the encroachments of the Federal Government, and pleads with all the earnestness of his ardent

nature, and all the force of his great abilities, for the rights of his native State. Expectation is now on tiptoe to hear the eloquent Pinckney. He rises with an air of perfect confidence. He attacks the States' rights doctrine with tremendous energy. He makes the corridors of the courtroom echo with his resonant voice. All are charmed with the forcefulness of his logic and the splendor of his language. Judge Story said of this effort by Pinckney that he had never heard a greater speech in his life. The court held unanimously that the bank was a proper fiscal agent of the Government and not subject to the taxing powers of a State.

Marshall's opinions are quite elaborate, but they contain no pedantic display of learning or useless glitter of words, but move on in simplicity and strength like the current of a deep river to their irrefragable conclusions. I can judge of the merits of Marshall as a public man by his official acts and opinions, but I have to depend upon his biographers for any account of his private life. According to these he was attentive, patient and courteous upon the bench, amiable and affable in society, simple and unpretentious in his manners, and exemplary in his habits. His home, when not occupied with the courts, was a farmhouse, where he was accustomed to lay aside his judicial dignity and pitch quoits with his farmer friends, an amusement in which he delighted, and in which he excelled. He was a loving and lovely man in his family, and when his wife died, with whom he had lived happily for forty-eight years, he was overwhelmed with grief, and would not be comforted. I

hold that the true value of a man is determined by his family and social relations. Men in public life intent upon notoriety may be heartless and unscrupulous, and under false colors win favor and applause, but in the home and at the fireside no such disguise can be assumed, and the man really is what he appears to be. The hearthstone is the touchstone of real worth.

Most men in the religious, professional and political world have an ideal—an embodiment of what they would like to be. Though without doubt Marshall had passions and feelings like other men, I have discovered no serious flaw in his character, and know of no reason why he should not stand as an ideal for the legal profession. All lawyers cannot be as great as Marshall was, but all lawyers can be as great as he was in all that constitutes the beauty of a character. Marshall was an author as well as a soldier, statesman and jurist, and wrote an exhaustive and accurate life of Washington. He was also a member of the Constitutional Convention of Virginia in 1830 when he was 75 years old, and was treated by that body with all the veneration and respect due to his great age and experience.

I was admitted to practice in the Supreme Court of the United States thirty-five years ago and have learned to look upon that court as a great tribunal, the greatest in the world. Forty-five States, with 76,000,000 of people, submit to its jurisdiction and abide by its decisions, and upon this fact we may anchor our hopes for the future preservation and domestic peace of the American Union. Constitu-

tions and creeds, churches and courts are more or less responsive to public opinion, but the Supreme Court of the United States is as far removed from the influence of passion and prejudice as it is possible for a human tribunal to be. Sitting in the Capitol, midway between the two Houses of Congress and independent of both, this exalted and serene tribunal holds the balances of the Government with a firm and equal hand.

Anniversaries like these are instructive and salutary and appeal to us from the sacred precincts of the tomb to avoid the mistakes and emulate the virtues of the great and good men who have adorned our history. John Marshall, at the ripe old age of 80, and after he had been Chief Justice thirty-four years, to borrow from the liturgy of the Episcopal Church, to which he belonged, "was gathered to his fathers, having the testimony of a good conscience, in the communion of the catholic church, in the confidence of a certain faith; in the comfort of a reasonable religious and holy hope, in favor with God and in perfect charity with the world."

ADDRESS

**By Horace G. Platt at Portland,
Oregon, February 4, 1901, on
CHIEF JUSTICE MARSHALL.**

The evil that men do is said to live after them, but the good is oft interred with their bones. There are, however, good men as well as bad men who "departing leave behind them footprints on the sands of time," whose good work knows neither death nor dying but lives on through the centuries. To the memory of such a man, Chief Justice Marshall, the bench and bar of this country are assembled to do honor and reverence on this the 100th anniversary of his elevation to the Supreme Bench.

The close of a century is suggestive of retrospection, and invites us to revisit its dawning, as does the beginning of a century hurry us on the wings of anticipation to its close.

The nineteenth century and the Republic were rocked in the same cradle. The two have grown up together, foster brothers, as it were, and they challenge comparison one with the other. The century began its travels on a stage coach; it ends them on limited trains that keep company with the sun as they speed across the continents. It began its correspondence with letters that lagged behind the snail; it ends it with the telephone and telegraph, that pace the lightning. It began with the nations whole wide worlds apart; it ends with earths' remotest regions in neighborly communication, and all the world a whispering gallery. It began with little science, less

machinery and no surcease from pain; it ends with science dropping in ripe fruit from the tree of knowledge, machinery a wizard doing the work of magic, and pain lulled to sleep by the hypnotism of anesthetics.

Equally marvelous has been the development of this Republic, of its government, its resources and its people.

One hundred years ago thirteen sparsely settled States fringing the Atlantic constituted the United States of America. Its western boundary was the Mississippi, but its southern line did not extend to the Gulf of Mexico. Today the United States of America consists of forty-five States and four Territories, cemented by blood into a Union one and indivisible, containing a population of eighty millions, and extending from British Columbia to the Gulf of Mexico, from the Atlantic to the Pacific, and including in addition the arctic region of Alaska, the Hawaiian Islands, the Antilles and the Philippines, those tropic isles of the Eastern and Western Seas, in all a great empire, second to none beneath the stars.

One hundred years ago we were an agricultural people whose exports did not exceed \$200,000 a year, and in importance we counted for little among the nations. Today we are an agricultural, a commercial, and a manufacturing people, our annual exports exceed one billion of dollars, and we stand with our back to the wall, with boundless resources and untiring energy, fighting single-handed the battle of prosperity against the world.

One hundred years ago our country had just started upon its career as a nation. It was a beginner among

those that had the experience of ages, it was rich only in possibilities. Today it has behind it the experience of the most wonderful century since time began, and has arrived at man's estate, rich beyond the dreams of its founders. Its people exceed in millions the civilized citizens or subjects of any rival realm or region. Its coffers hold more gold than ever glittered in the opiate dreams of any Oriental lord, or than now is stored in any European or Asiatic treasury. Its schoolhouses, flag-surmounted, like blazing beacons, lead more children out of darkness into light than are rescued from ignorance in any other land. Within its borders more homes shelter those of the people who live by the labor of their hands than in any of the countries beyond the seas. The poverty of the old world grinds not its toilers. Its countless acres of waving grain and its snowy fields of cotton feed and clothe more peoples than its own. Its factories threaten with idleness the artisans of the other nations. An American bridge spans the Nile, American locomotives with their cheery whistle break the stillness of Siberian wastes and Asiatic vastness, American dollars are replenishing the emptying coffers of Europe, and an American battle-ship is Queen of the Seas.

One hundred years ago we had a government that was an experiment, based upon a written Constitution not yet understood or interpreted. Today we have a government that has stood all the tests a hundred years could devise, a government proven to be of the people, by the people, and for the people, to be a tower of strength for struggling humanity from whose summit the torch of liberty lights the world, and it

is based upon this same written Constitution to which John Marshall gave its original interpretation, an interpretation that time has strengthened and circumstance affirmed, an interpretation that is as permanent as the Constitution, an interpretation that was a masterly unfolding of the meaning of the Constitution, that "found it paper, and made it power," and to which we are indebted for the present strength and stability of this government, the present national oneness of this heterogeneous collection of State sovereignties, and the consequent supremacy on the American continent of the United States. Therefore to this great jurist more than to any other man since Washington do we stand indebted for the greatness and the glory that characterize the United States as the crowning achievement of the nineteenth century.

There is no page in our country's history that the life of this great jurist would not adorn. There is no one of our country's builders who can claim more renown. It therefore becomes us, and must interest and instruct us, to review the events of his historic life, to recall his virtues, recount his achievements, and renew the immortelles upon his grave. I therefore ask your attention while I briefly and reverently attempt his eulogy.

John Marshall was born in Fauquier County, Virginia, 1755. He had but little school education, and never attended college but for a short course in law. He served from 1775 to 1779 in the army of the Revolution, and endured the hardships of that terrible winter at Valley Forge.

It was while he was there fighting for his country

that he met Washington and Hamilton. It was amidst the sufferings and dangers of war that there began a lasting friendship and mutual admiration between these three remarkable men, who did so much to start this country aright and give an abiding form to its government.

In 1780 Marshall was admitted to the bar after a not very extensive course of legal study. In 1782 he was elected to the Legislature and made a member of the Executive Council, though then only twenty-seven years old. Although he served several terms in the Legislature he at the same time rose rapidly at the bar, and was employed in most of the important litigation before the Virginia Court of Appeals. His success can be understood from his style in argument, which may be best described in the words of William Wirt, who thus wrote of him: "Marshall spoke, as he always does, to the judgment merely, and for the simple purpose of convincing. His maxim seems always to have been to 'aim exclusively at strength.'"

In 1788 he was elected a member of the Virginia convention called to consider the proposed Federal Constitution. Virginia was the hotbed of those who were opposed to a closer union of the States whereby it was sought to create a central government that in Federal matters would dominate the States. Patrick Henry was the eloquent spokesman of this party in this convention.

Marshall believed that the two objects in forming a government were safety for the people and energy in the administration. He was sore distressed by the weakness of the existing Confederation, and its inefficiency to accomplish either of these objects. "If

a system of government were devised by more than human intelligence," said he, "it would not be effectual if the means were not adequate to the power."

Washington had strongly urged "an indissoluble Union of the States under one Federal head" as one of the four things essential to the well-being, to the existence of the United States as an independent nation, as one of the pillars on which the glorious fabric of our independency and national character must be supported." Marshall thoroughly sympathized with his great chief in this regard. He agreed with Washington that it was a solecism in politics that we should confederate as a nation and yet be afraid to give the rulers of that nation sufficient power to order and direct it. He therefore strongly favored the establishment of a national government with power to accomplish national purposes, and he urged the ratification of the Constitution. The majority of the people of his State were opposed to it. They preferred the supremacy of the States to the supremacy of the Union. He was warned by his friends that he would be defeated unless he came out against ratification, but he replied with the courage that ever characterized him that if elected he would be a determined advocate for its adoption. He was elected, and combated with matchless ability the eloquence of Patrick Henry.

1795 he was again and against his wishes returned to the Legislature. In fact, on the day of the election, and after he himself had voted and had gone about his business, a poll was opened for him and without his knowledge he was elected.

The administration of Washington was then almost

overwhelmed by a wave of unpopularity. The French Minister was inciting the people against England. Popular feeling in favor of France was almost at a white heat. Washington's proclamation of neutrality in the war between France and England, and his treaty of commerce with England, called the Jay treaty, were strongly and bitterly condemned in Legislatures, in the newspapers, and at public meetings. Marshall was personally popular in Virginia. He was admired for his ability and respected for his integrity. It would have been easy for him to go with the majority of his fellow-citizens. Warm friends urged him to take this course. But he was as distinguished for his courage as for his capacity. When his judgment had decided he knew no turning back. He, therefore, not only in the Legislature supported the President with all his energy and ability, but after a mass meeting in Richmond, presided over by Chancellor Wythe, had denounced the Jay treaty as insulting to the dignity, dangerous to the security, and repugnant to the Constitution of the United States, he called a public meeting of the citizens, and succeeded in having resolutions carried approving the conduct of the administration, and admitting that it was acting within its Constitutional rights. Some one has well said of this event, "With rare courage at a public meeting at Richmond he defended the wisdom and policy of the administration, and his argument as to its Constitutionality anticipated the judgment of the world."

For this course he was denounced as an aristocrat and as an enemy of a republican form of government.

But these denunciations could not disturb his composure, nor prevent the growth of his reputation as a Constitutional lawyer.

His speech in the Legislature that the Constitutional provision giving to Congress the right to regulate commerce did not take from the executive the power, with the advice of the Senate, to negotiate and conclude a treaty of commerce, not only won him national fame, but settled this much-disputed Constitutional question for all time.

Soon thereafter Washington offered him the Attorney-Generalship and also the French Mission, both of which he declined, though he did subsequently go with Pinckney and Gerry to France as a Commissioner to settle the strained relations, verging on hostility, then existing between the two countries.

This mission resulted in nothing except to increase Marshall's fame by reason of his very able and dignified correspondence with Talleyrand, which, in the opinion of Patrick Henry, raised the American public in their own esteem.

In 1799, at the earnest solicitation of Washington, unwillingly but unselfishly and loyally, and in the face of an almost certain defeat, he again breasted the waves of popular disapproval, and entered the race for Congress. His election was a triumph won only by great courage, backed by his rapidly growing reputation. Although a new member, he immediately took rank as one of the leaders upon all Constitutional questions, and in the matter of the surrender of Jonathan Robbins by the President to England upon a charge of murder committed upon a British man-of-war, he delivered an argument that drew the

line between the executive and judiciary departments so clearly as to have the effect of a judicial construction of the Constitution, an argument so profound, so complete, so convincing that, though not delivered in court, it has been considered worthy of preservation in the Reports of the Supreme Court. Free from any effort at rhetoric, oratory, or display, it reads like a judicial opinion, calm, intellectual, decisive of the point in dispute. In this instance Marshall again displayed that courage that always supported him when a Constitutional question arose, and the proper construction was the unpopular one.

It must be borne in mind that the American people at that time were but little used to governmental restraint, and were less disposed towards any action of the Federal Government that did not harmonize with the passions and prejudices of the hour. Washington's proclamation of neutrality and the Jay treaty were unpopular because the people were in sympathy with France, and because they preferred that Congress should have the sole power to take such steps. Adams' surrender of Jonathan Robbins was unpopular because it was a compliance with a demand from England, and the people thought that the courts had the sole power to settle such a question. But in all of these matters Marshall considered neither popular approval nor disapproval, and his wonderful analytical mind, his intuitive perception of the true meaning of the Constitution, his impartial mental temperament, enabled him to so correctly mark out the jurisdictions of the three departments of the government as prescribed in the Constitution that his opponents, in the words of Gallatin, who had been se-

lected to reply to him in the Robbins matter, pronounced his arguments unanswerable.

Before his term as Congressman was finished Adams offered him a Supreme Court Judgeship, which he declined, and then appointed him successively Secretary of War and Secretary of State. The latter office he filled until January 31, 1801, when he was appointed Chief Justice, taking his seat on February 4 of the same year.

He was then forty-six years of age. What a contrast his career then beginning was to be to that of his great French contemporary, Napoleon Bonaparte, who, a few years later, when also forty-six years of age, finished a career that like a meteor had dazzled the world both by the empyrean height its starry course pursued and by the brilliancy of its light, that destroyed all it illumined!

One hundred years ago these two men were leaders of the two peoples that were then attracting the attention of the world by their struggles for the rights of man. One sought his own glory, the other only the people's good. One fell from the throne he had erected upon the liberty of his country at the age when the other took his seat as Chief Justice of the highest court of his land, where for over a third of a century he guarded the people's government from the assaults of its enemies.

When the recording angel shall call the roll of the great men of the ages, those men whose minds shone with the light of genius and whose lives glowed with the Promethean fire, not to the one who sought to scale the stars upon a pyramid of crushed humanity, but to the one who helped humanity itself to reach

the stars will come the glad tidings, "Well done, good and faithful servant, enter thou into the joy of thy Lord."

John Quincy Adams said that if his father had done nothing else to deserve the approbation of his country and posterity, he might proudly claim it for the single act of making John Marshall Chief Justice; and posterity exclaims, "Amen."

William Pinckney said that: "He was born to be Chief Justice of any country into which Providence should have cast him," and every lawyer of the land echoes this statement.

Bryce, in his "American Commonwealth," has truly said that he was so singularly fitted for the office of Chief Justice, and rendered such incomparable services in it, that the Americans have been wont to regard him as a special gift of favoring Providence.

Story said of him: "He was a great man, he would have been deemed a great man in any age, and of all ages, he was one of those to whom centuries alone give birth, standing out like beacon lights on the loftiest eminences to guide, admonish, and instruct future generations as well as the present."

When Marshall became Chief Justice practically nothing had been done by the courts in construing the Constitution. There had been but two decisions by the Supreme Court upon Constitutional questions. During his incumbency of thirty-four years there were fifty-one such decisions rendered by this court, in thirty-four of which he wrote the opinions, and in all but one of which his was the controlling mind. In but one of these he was overruled, the case of *Ogden*

vs. Saunders, wherein he wrote a dissenting opinion against the power of the States to pass bankruptcy laws.

The originality of his decisions may be best understood by bearing in mind that a written constitution, created by the people and capable of being altered or repealed only by the people, controlling and not controlled by the Legislature, was at that time a new thing in the science of government. The bench and bar of that day had known only the English Constitution, which Parliament could change at will. They were now called upon to construe a written constitution, from which the Executive, Legislative and Judiciary departments alike derived their powers, and which measured out as it created all their rights. This charter was like an unexplored country, unmapped, unsurveyed, undeveloped.

The prevailing tendency of that revolutionary period was to make the Legislative Department supreme. The opposing tendency, as voiced by such creative men as Hamilton, was to strengthen the Executive Department against the encroachments of the Legislature. Such a situation was, in the language of Senator Daniel, of Virginia, without a precedent in history, and has no parallel. The occasion demanded a judge who could, without fear and without reproach, construe this instrument, blaze out the paths each Department must tread, and measure out the power each must exercise. This judge had no precedents to follow. His only guide was the letter of the law, his only inspiration its spirit, his only resource great wisdom unclouded by passion or prejudice.

Marshall was such a man. He did not need precedents. His mind seemed sufficient unto itself. The meaning lay to him in things themselves, and not in what others said about them. Therefore his opinions are almost free from the citation of authorities, from quotations or illustrations. As the artist can see the perfect image within the block of unhewn marble, so Marshall could see the meaning of the Constitution in the unexplained writing.

Said Justice Story: "When I examine a question, I go from headland to headland, from case to case; Marshall had a compass, put to sea, and went directly to his result."

He excelled in the power of stating a case so clearly that his statements were arguments. He possessed a marvelous grasp of principle, a power of logical reasoning that amounted to mathematical demonstration, a miraculous insight that went straight to the ultimate fact, and a courage that allowed no interference with the pursuit of truth. In his development of the law as he understood it, and he instinctively knew what the law was, he recognized neither rank nor power, neither rich nor poor, neither favor nor disfavor, neither Republican nor Federalist, and, as has been well said, "he taught angry Presidents and partisan Legislatures to bow to the majesty of the law."

Of him the Charleston Bar said: "His fame has justified the wisdom of the Constitution, and reconciled the jealousy of freedom to the independence of the judiciary."

His greatest work was in judicially defining the jurisdiction of the three departments of Government

as prescribed in the Constitution. He had mapped out his course in this regard in his arguments in the Legislature, at public meetings, and in Congress. Upon the bench he clothed these arguments with judicial authority, and in *Marbury vs. Madison* he did this with remarkable force and effect. His opinion in this case may be deemed to be as great a document as the Bill of Rights, as far-reaching as the Declaration of Independence, as essential to the healthy development of our Government under the Constitution as the Constitution itself, as one of the great bulwarks of Government under law against personal or popular Government, as a searchlight casting its rays from the dome of the Temple of Justice upon the Government, and, like the modern X-ray, disclosing the orderly arrangement, the distinct and separate existence and the prescribed duties of all its parts, and the pre-eminence of the Constitution over all. In this opinion Marshall, with infinite tact, but with the clearness of the noonday sun, disclosed not only the path along which Presidential authority may travel without let or hindrance, except that of conscience and its own discretion, but also the path along which the Presidential steps are controlled by law as rigidly as those of the humblest official. In this opinion he revealed to the world how surely and securely the law protects the rights of the citizens. In this opinion he judicially proclaimed the supremacy of law over President, Congress and the Supreme Court. In this opinion there was first announced to the world the doctrine that the judiciary could declare void a law enacted by Congress and approved by the President if it contravened the Constitution.

Without this power in the Supreme Court the Republic must have foundered on the rocks of Executive usurpation or the shoals of Legislative tyranny.

It is impracticable to enumerate the many great constitutional questions that came before him for settlement, and that he settled for all time, but it may be interesting to note a few as illustrative of the importance of his labors in strengthening the Government, and in protecting the rights of the individual.

One of the most valuable safeguards to the rights of the individual is the constitutional provision prohibiting a State from passing any law impairing the obligation of a contract. The wisdom of placing in the Constitution this restraint upon the States will never cease to be a matter of congratulation to all the people. But at the time of the formation of the Union and thereafter the States claimed to be omnipotent in local matters, to be free to enact any legislation thereon, and recognized no power in the Federal Government to annul their laws.

In a case arising out of a Georgia statute Marshall had the first opportunity to construe this provision, and he held therein that a State law granting lands was a contract, that a subsequent law rescinding this grant impaired the obligation of this contract, and was therefore in contravention of the Constitution and void, and that the Supreme Court had the power to declare State laws as well as Federal laws void when they contravened the Federal Constitution.

This same ruling was followed by him in the celebrated Dartmouth College case, wherein he held that a charter of a corporation was a contract which a State could not impair. His opinion in this case is

admitted to be the most thorough and elaborate exposition of the constitutional sanctity of contracts to be found in the books. This decision, said Chancellor Kent, "did more than any other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the Government, and to give solidity and inviolability to the literary, charitable, religious and commercial institutions of the country."

Owing to this decision all State Constitutions now provide that all corporation charters are taken subject to the right of the State to alter or repeal them.

The States were made very jealous of their sovereign rights by these decisions, but these were not all. There must be some final arbiter as to the meaning of the Constitution, and Marshall held that the Federal Supreme Court must be this arbiter, that the Constitution has provided this tribunal for the final construction of itself, and the laws and treaties made thereunder and that this power cannot be exercised in the last resort by the courts of every State of the Nation. He therefore held that the Supreme Court could set aside the judgment of a State court in cases involving a construction of the Constitution of the United States laws of Congress, and that State Legislatures cannot determine the jurisdiction of the courts of the Union or annul their judgments or destroy rights acquired thereunder.

In one case that came before the Chief Justice the Federal Government and a State Government were squarely arraigned against each other. The State of Maryland claimed the right to tax the Bank of the United States doing business within its borders. The

Federal Government denied this right on the part of the State, whereupon the State denied the Constitutional right of the Federal Government to charter a bank. Here was a clash of sovereignties. The Constitution was apparently silent upon both questions. Marshall held in a masterly opinion that the creation of the bank was a Constitutional exercise of the powers of the General Government, and that State Legislation taxing the bank was contrary to the Federal Government; that it was an invasion of Federal sovereignty which must be supreme where it exists at all.

The last of his Constitutional decisions which I shall notice was of such far reaching consequence that without it the Union must have fallen apart. The State of New York had granted to certain parties an exclusive right to navigate all the waters of the State by vessels moved by steam. This grant had been sustained by all the State courts, even by so great a jurist as Chancellor Kent. The Chief Justice perceived that the assertion of this right, on the part of a State, struck right at the power conferred by the Constitution on Congress to regulate commerce with foreign nations or among the several States, and was in conflict with the Acts of Congress which authorized vessels employed in the coasting trade to navigate the waters of every State, and he held the grant was repugnant to the Constitution and void.

Suppose the decision of Chancellor Kent had been affirmed! There would have been a barrier at the mouth of every river, and commerce would have been so crippled as to destroy the Union.

Chancellor Kent was a great lawyer, his opinions were of high authority. They were backed by the

public opinion of the States as well as by his great reputation. But Marshall was more far-seeing than Kent. Though he appreciated the great weight of the opinion of those who maintained this alleged right of the States, he did not allow this to affect that independence of judgment that ever distinguished him. He said: "It is supported by great names—by names which have all the titles to consideration that virtue, intelligence and office can bestow. No tribunal can approach the decision of this question without feeling a just and real respect for that opinion which is sustained by such authority; but it is the province of this court, while it respects, not to bow to it implicitly; and the judges must exercise, in the examination of the subject, that understanding which Providence has bestowed upon them, with that independence which the people of the United States expect from this department of Government."

These questions so decided by Marshall now appear too simple to be disputed. But this idea arises from the fact that the present generation has grown up to look upon them as self-evident constructions of the Constitution.

In Marshall's day, however, they involved the existence of the Union as a strong, independent, self-protecting, efficient government, and they aroused in their settlement all the learning, eloquence and industry of such lawyers as Wirt, Webster, Pinckney, Luther Martin and others as able.

Marshall, it is true, was a Federalist, but not in the sense that Hamilton was. He was not a liberal constructionist, as was Hamilton, nor was he a strict constructionist, as was Jefferson. He believed that

the Constitution must be carefully examined to ascertain if any particular power was therein given, that upon him who asserted the existence of the power rested the burden of proof, but that if such power was established the Constitution gave all those incidental powers which are necessary to its complete and efficient execution.

With great wisdom, with great common sense, he found the Constitutional provision that Congress may make all laws which shall be necessary or proper for carrying into execution the powers vested in the Government of the United States, a cornucopia from which could be poured whatever was needed to effectuate a Constitutional power. "Let the end be legitimate," said he; "let it be within the scope of the Constitution, and all means which are appropriate, which are not prohibited, but consistent with the letter and spirit of the Constitution, are Constitutional." Thereby he made the Constitution an instrument that did not, like a strait-jacket, dwarf a growing, enterprising, expanding people, but that has grown with the people, and always along the lines of its original design.

Realizing that the Constitution was the sheet anchor of the Government, that like the Government it was "framed for ages to come and was designed to approach immortality as nearly as human institutions can approach it," he based his constructions upon a patriotism so broad, a logic so inexorable, a wisdom so profound, and a prescience so far-reaching that they remain today our mainstay and our guide, as applicable as when rendered, and give promise to our hopes of their anticipated immortality.

We do not say that without Marshall the Union would certainly have been dissolved by the centrifugal forces that fought for what they called the rights of the States, but we do say that Marshall's decisions accomplished the purpose expressed in the opening lines of the Constitution, to wit, "The formation of a more perfect Union," and that at that formative period of our Government he was equal to his great opportunity to bring about a more perfect union of the States.

"The people made the Constitution, and the people can unmake it," said he. "It is the creature of their own will, and lives only by their will. But this supreme and irresistible power to make or unmake resides only in the body of the people, not in any subdivision of them. The attempt of any of the parts to exercise it is usurpation, and ought to be repelled by those to whom the people have delegated the power of repelling it." This doctrine was the centripetal force that welded the many parts called States into the homogeneous whole called the Union; this was the doctrine that made the Federal Government supreme and independent in all matters delegated to it by the Constitution, without which independence from State interference there could not have been the more perfect Union designed by the fathers.

The especial characteristic of Marshall to which I desire to call attention, apart from his great wisdom, was his great courage. Many judges are learned and able. Most judges are honest. Not so many have the courage of their convictions. Many are intimidated by the necessity of courting popular favor because of their need of popular approval when they

seek re-election. Some seek popular approval and mistake the reputation of the moment for the fame that comes hereafter and goes not away. Not all appreciate the words of Mansfield, who said, while trying the case of *Rex v. Wilkes*, "I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands or the daily praise of all the papers which come from the press. I will not avoid what I think is right though it should draw on me the whole artillery of libels, all that falsehood and malice can invent or the credulity of a deluded populace can swallow."

Marshall was such a man and such a judge. I have shown that he was such a man before he became Chief Justice. As Chief Justice he was equally so.

In the Burr trial there was much to influence a weak judge. Burr's hands were red with the blood of Hamilton, whom Marshall had loved and respected and whose death he felt was a great loss to the country. The President desired and did all that he decently could to secure a conviction. The people believed Burr guilty and demanded his life. So strong was this feeling on the part both of the Administration and the public that upon Burr's release the United States Attorney exclaimed: "Marshall has stepped in between Burr and death." The President did not hesitate to intimate that his acquittal was due to Marshall's Federalist inclinations, and the mob burned the Chief Justice in effigy.

But neither the calumnies that the present voiced or that could be expected of the future deterred Marshall from deciding as the law prescribed. Said he to the jury, in reference to the public clamor: "That this court dares not usurp power, is most true. That this court dares not shrink from its duty, is not less true. No man is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without self-reproach, would drain it to the bottom. But if he have no choice in the case, if there be no alternative presented to him but a dereliction of duty or the opprobrium of those who are denominated the world, he merits the contempt as well as the indignation of his country who can hesitate which to embrace."

On another occasion he said: "In the argument we have been admonished of the jealousy with which the States of the Union view a revising power intrusted by the Constitution and laws of the United States to this tribunal. To observations of this character the answer uniformly given has been that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon us."

Marshall's conscientious appreciation of judicial duty was nowhere more apparent than in the matter of the issuing of a subpoena to President Jefferson in the Burr trial. After laying as his foundation the statement that "In the provision of the Constitution and of the statute which give to the accused a right to the

compulsory process of the court, there is no exception whatever," he said: "It cannot be denied that to issue a subpoena to a person filling the exalted station of Chief Magistrate is a duty which would be dispensed with much more cheerfully than it would be performed! But if it be a duty the court can have no choice in the case," and he issued the subpoena, adding the statement that "whatever difference may exist with respect to the power to compel the same obedience to the process as if it had been directed to a private citizen, there exists no difference with respect to the right to obtain it."

"The Judicial Department," said he, near the close of his life, in the Virginia Constitutional Convention, "comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important that the judge should be rendered perfectly and completely independent, with nothing to control him but God and his conscience? I have always thought, from my earliest youth till now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt or a dependent judiciary."

In these days when the press can by daily abuse and crimination prevent the re-election of judges whose decisions have been honestly rendered, when aggregated capital or aggregated labor can secure the defeat of a judge who has neither usurped power nor shrunk from his duty, but has simply taken the course marked out by law, it is small wonder that an elected judiciary is not always independent, without fear and without reproach. To our endless glory and good

fortune, Marshall was independent of official favor or popular prejudice or journalistic lampooning. We believe, however, that none of these would have affected his decisions even had Jefferson had the power of removing him, or had the voters had the opportunity of defeating him at the polls.

We believe that during the century just opening, with the fever of concentration burning in the veins of both capital and labor, the former desiring to accumulate dollars and the latter desiring to share them, with the labor trust controlling the votes and the industrial trusts controlling dollars, the need of an independent judiciary will become more and more a pressing necessity. On both sides there is right. On each side there is often wrong. Each should have equal justice. But this even-handed justice must come from an independent judiciary, and this independence can be secured only by life or a long tenure of office and by ample compensation.

It has been said by an orator, in speaking of Marshall, that the test of greatness is great ability coupled with great opportunity greatly employed. This country will always produce men of great ability and it will always furnish great opportunities. These to be greatly employed upon the bench must be coupled with great independence.

Marshall as an individual was simple in habits, kind in disposition, dignified in deportment, courteous and considerate towards others, and in thought, in speech and in conduct ever chivalrous towards women. Of his parents he always spoke with great reverence and filial piety, and for his wife he had a love that grew stronger with the years. If it be true that man's

ruling passion manifests itself at death, then love of wife and parents was his ruling passion, for a few days before his death he wrote the following simple inscription for his tomb:

"John Marshall, son of Thomas and Mary Marshall, was born on the 24th day of September, 1755; intermarried with Mary Ambler the 3d of January, 1783; departed this life . . . day of, 18..."

Jefferson also wrote his own epitaph, but it was of a different kind. This great Virginian wrote the following: "Author of the Declaration of Independence, of the Statute of Virginia for religious freedom, and founder of the University of Virginia." Marshall could justly have written as his epitaph, instead of the above simple little annal, the words: "If you would see my monument, behold your Constitution," for he has been well called the second maker of the Constitution, its great expounder, the father of constitutional law.

His opponents would have made the Constitution a rope of sand. His decisions made it a band of steel that not even a civil war could break asunder.

Under him, in the words of a distinguished foreigner, the Supreme Court became the living voice of the Constitution, the conscience of the people, the guarantee of the minority.

Upon the death of Washington his was the voice to utter of him on the floor of Congress those memorable words, "First in war, first in peace, first in the hearts of his countrymen." The American people will ever associate Marshall with Washington in sacred and grateful memory. He was ever the able and fearless defender of Washington, and as Chief Justice

took up the work where the first President laid it down, and carried it on in the spirit of him who began it. It was therefore most fit that he should have been the first chairman of the committee appointed to erect a monument to Washington. The shaft erected by this committee in its simplicity and height well portrays the character of Washington. But the real monument of both Washington and Marshall, more imperishable than brass or sculptured marble, is this Constitutional Government that has stood the strain of a civil war, the greater strain of accumulated wealth and vast territorial expansion, and which starts the new century with great burdens, new responsibilities, and unlimited temptations, and with the promise of another century's growth along the lines so clearly marked out by John Marshall.

We can well attribute to him the credit of building for all time. Though the number of States has increased from thirteen to forty-five, and our territory has expanded from the Mississippi to the Pacific, and thence northerly to the land that is lit by the Aurora Borealis, and southerly and westerly to the islands of the tropic seas in whose midnight skies glitters resplendent in starry outline God's symbol of hope, the Southern Cross, expansion has not weakened the influence of the Federal Government in the remotest States nor lessened their loyalty to the Union. Though a network of railroads intersects the land in all directions, like living veins pulsating with the hot blood of competition, almost obliterating State lines, and though commercial corporations and labor unions ramify the country irrespective of political divisions, we are still tenacious

of our State sovereignties. Though we have wars beyond the seas, and foreign complications are increasing as our foreign trade grows larger, and innumerable new problems in politics and economics are daily arising from our rapid internal and external growth, we are still loyal to our traditions, undismayed by the difficulties of the present, hopeful of the future, and above all still wedded to the Constitution as Marshall construed it, and time but the impression stronger makes as streams their channels deeper wear.

We gratefully appreciate his breathing into this Constitution the breath of a vigorous life, his developing this Constitution along such lines of healthy growth that each member of our Union has been individually stimulated, yet kept in harmony with the others and in subjection to all, whereby there has been produced a Constitutional Government under which any number of States and Territories can live, each in distinct existence but as a united whole, as diverse as the waves and yet as united as the sea, capable of any expansion, impossible of disruption, powerful because of the individuality of its parts and the solidity of its harmonious whole.

Therefore, today, all over this land, in the capital of the Old Dominion where his labors began, at the capital of the Nation where his labors ended, in Philadelphia where hangs old Liberty Bell that was rent in tolling his funeral knell, in all the marts of commerce that border the Atlantic, in the cities of the Great Lakes where throbs the Nation's heart, along the wide rolling Mississippi hastening to the sea, at the city of the Golden Gate where the Occident meets the Orient

in a sunset greeting, and here in this metropolis of the north, we do reverence to him as one of the greatest Americans.

Therefore, today, in every court in the land lawyers suspend their labors and litigants halt in their contentions to listen only to the voice of his eulogist, while Justice opens her eyes to behold the glory of her most illustrious ministrant.

Gentlemen of the bench and bar, the fame of lawyers, however learned and eloquent they may be, is ephemeral. The reputation of judges is but little less evanescent. Their glory is in laws honestly administered, in justice impartially awarded. To the soldier and to the statesman is it more frequently given to pitch his tent on Fame's eternal camping ground, to be honored with a niche in the Pantheon of the great. Few even of these inscribe their names so high that they are not obscured by the accumulated dust of a century. The legal profession can therefore take pride in the fact that of all the great and good men gone, of the immortal few who were not born to die, none stands today higher in the respect and reverence of the American people than that able lawyer and matchless judge, John Marshall, the great Chief Justice. His renown is the richest inheritance of the American Bar. Above all the high places where the judges sit his name should be written in letters of gold where the sunlight may illumine and the dust not obscure, to ever encourage the judge to be brave and the lawyer to be true.

Early yesterday morning, as my train followed a narrow stream, winding its way to the valley through a mountain defile, where the pine trees had a silvery

sheen in their garments of snow, suddenly there loomed up before me a peak o'ertopping all the rest, its snowy crest bright with sunshine. It reminded me of Chief Justice Marshall. The stream was the Republic, winding its then narrow way towards its present broad expanse, and high up on the lofty pinnacle of the Supreme Bench, towering above all, was the venerable Chief Justice—his white hairs illumined by the sunlight of genius—a tall man, sun-crowned—like that peak, catching the first rays of the morning sun, to hold them as a lamp to guide his countrymen out of darkness into light.

With this I close my humble tribute to the memory of Chief Justice Marshall. This is the immortelle that in your name I place upon his tomb. In honoring him we have honored ourselves.

May the Constitution as he construed it continue to be for another century our pillar of cloud by day and pillar of fire by night, so that when another hundred years has gone by, this people still under this Constitution may again take pleasure and pride in gratefully honoring the name of John Marshall.

